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CHE SOM CHE MAT

v.

PENTADBIR TANAH DAERAH KERIAN

B

HIGH COURT MALAYA, IPOH
LEE SWEE SENG JC
[LAND REFERENCE NO: 15-17-2011]
1 JULY 2013

C ***LAND LAW:*** *Acquisition of land - Compulsory - Compensation - Objection against - Land Acquisition Act 1960, s. 38(1) - Whether compensation reflected true market value of land - Whether applicant's valuer and government's valuer had come to common concurrence - Whether court had discretion to differ from amount decided upon by both* D *assessors - Injurious affection to remainder of land - Whether amount awarded should be increased - Whether applicant should be compensated for earth filling works carried out to construct new house on remaining land - Whether applicant should be allowed to claim for damage to crops - Interest - Award of - Whether on increased computation - Land* E *Acquisition Act 1960, ss. 40D & 48 - National Land Code, s. 115*

LAND LAW: *Acquisition of land - Compensation - Assessment of - Whether compensation reflected true market value of land - Whether applicant's valuer and government's valuer had come to common* F *concurrence - Whether court had discretion to differ from amount decided upon by both assessors - Injurious affection to remainder of land - Whether amount awarded should be increased - Whether applicant should be compensated for earth filling works carried out to construct new house on remaining land - Whether applicant should be allowed to claim for* G *damage to crops - Interest - Award of - Whether on increased computation - Land Acquisition Act 1960, ss. 40D & 48 - National Land Code, s. 115*

A part of the applicant's land situated in the district of Kerian, Perak ('the land') was compulsorily acquired for the purpose of a H project to construct a switching station ('the project'). The applicant was awarded the sum of RM25,326 for the partial loss of land and RM41,775.75 for injurious affection. The applicant was not satisfied with the total award of RM67,101.75 and filed an objection under s. 38(1) of the Land Acquisition Act 1960 I ('the Act'), on the grounds that (i) the compensation did not

reflect the true market value of the land; (ii) he had been insufficiently compensated for the injuries sustained by the remaining portion of the land; and (iii) he had not been compensated for the earth filling works carried out to construct a new house on the remaining land. A claim for compensation for the damage to crops caused by the floods arising from the excavation works on the project was also made. The applicant's valuer submitted that the determination of the market value of the land ought to be based on the evidence of transactions within the neighbourhood as at the date of the compulsory acquisition. Based on the evidence of these comparables and after factoring in the necessary adjustments, the applicant's valuer contended that the value of the land should be RM3.40 per square foot ('psf'), while the government valuer suggested that the value psf should be RM1.25.

Held (allowing the applicant an increased compensation of RM98,467.75 with interest):

(1) At present, property valuation is both a science as well as an art with room for definitiveness and discretion in as much as there is room for a right value as for a range of values. Thus, so long as the various adjustments had been referred to in arriving at the market value of the land from a common comparable, then that would suffice. That was where the rationale for s. 40D of the Act, which provided that the amount of compensation to be awarded should be the amount decided upon by the two assessors, *ie*, the applicant's valuer and the government's valuer, became relevant. In the present case, the two assessors had in their written signed report finally agreed on RM1.50 psf as being a reasonable market value of the land. As both assessors, who were the experts for the market value of the land, had come to a common concurrence, there was no reason to consider the matter further but merely to comply with their computed market value. As such, the sum awarded for the partial loss of land was increased from RM25,326 to RM30,289.60 (RM1.50 x 20,193 sq ft). (paras 13, 14, 16, 18 & 19)

(2) Both assessors were in agreement that the 'Before and After Method' was the most appropriate method for assessing the amount of injurious affection caused. They also agreed that based on the detrimental effects of the compulsory acquisition,

A the total diminution in value of the remaining land, which represented the compensation required to reinstate the land, would amount to 70% or RM113,020.89. As the remaining land was calculated as 0.9241 hectare, the amount awarded for injurious affection would be RM104,500 (0.9241 hectare x B RM113,020.89). Thus, the increase in computation was RM62,724.25, with the former award of RM41,775.75 deducted from the present award of RM104,500. (paras 22-24)

C **(3)** Under s. 115 of the National Land Code ('NLC'), the owner of agricultural land was allowed to use one-fifth of the land for dwelling purposes. When the land was inspected, evidence showed that the applicant landowner had engaged a contractor to prepare the site for rebuilding a house on the D land. It was pointed out that the filled up area approximately 3/4 acre in size was acquired and the cost of earth filling was not compensated. There was evidence of loss of earth filling. Thus, the applicant ought to be allowed to claim the sum of RM21,780 for the earth works she had incurred in order to E construct a new house. (paras 25-27)

(4) The applicant's valuer had observed that about 60 oil palms of about 23 years, which were yielding fresh fruits, had been affected by the flood caused by the excavation works undertaken by the Land Administrator's contractor. Although F the applicant's valuer had estimated the cost of reinstating the crops to be RM18,000 (60 oil palm trees at RM300 per tree), there was no evidence tendered on how the valuer arrived at the cost of RM300 per tree. In the circumstances and since the trees were already 23 years old, which is the average fruit G producing life span of oil palm trees, the sum of RM9,000 (60 oil palm trees at RM150 per tree) would be a more accurate award for damage to crops. (paras 30-32)

(5) Section 48 of the Act provides for interest to be awarded. H Thus, the Land Administrator was ordered to pay the applicant interest at 8% per annum on the increased compensation sum of RM98,467.75 from the date when he took possession of the land to the date of payment to the applicant. (paras 37-39)

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Case(s) referred to:

Bertam Consolidated Rubber Co Ltd v. The Collector of Land Revenue, Province Wellesley North Butterworth [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78 FC ***(refd)***

Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang [1967] 1 LNS 12 HC ***(refd)***

Chuah Say Hai & Ors v. Collector of Land Revenue, Kuala Lumpur [1967] 1 LNS 34 HC ***(refd)***

Nanyang Manufacturing Co v. The Collector of Land Revenue, Johore [1953] 1 LNS 59 HC ***(refd)***

Ng Tiou Hong v. Collector of Land Revenue, Gombak [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 326 FC ***(refd)***

Pentadbir Tanah Daerah Petaling v. Glenmarie Estate Ltd [1992] 1 CLJ 360; [1992] 1 CLJ (Rep) 272 SC ***(refd)***

Rickets v. Metropolitan Railway Company [1867] LR 2 HL 175 ***(refd)***

Tenaga Nasional Bhd v. Ong See Teong & Anor [2010] 2 CLJ 1 FC ***(refd)***

Legislation referred to:

Federal Constitution, art. 13(2)

Land Acquisition Act 1960, ss. 1(1A), 2(a), (d), 38(1), 40D(1), (2), 48

National Land Code, ss. 115(4)(a), 283

Other source(s) referred to:

KV Padmanabha Rau, *Land Acquisition in Malaysia (Cases and Commentaries)*, p 178

For the applicant - Zamalik Abdul Rahman; M/s Pakatan Jurunilai & Perunding Hartanah

For the respondent - Teoh Chin Chong; Assistant State Legal Advisor Perak

Reported by Vani Krishnan

JUDGMENT

Lee Swee Seng JC:

[1] The applicant has a piece of land held under Lot 489, GM 3386, Mukim of Beriah, District of Kerian, Perak ('scheduled land'). Part of the scheduled land was acquired for the purpose of constructing a "Projek Landasan Keretapi Berkembar Elektrik Ipoh-Padang Besar-Switching Station Bukit Merah" ('the project').

[2] After the land inquiry held on 31 January 2011 at the Pejabat Tanah Daerah Kerian in Parit Buntar, the applicant was awarded *vide* Form H by the Land Administrator the sum of RM25,326 for partial loss of land and RM41,775.75 for injurious affection, particulars of which are as follows:

A (i) Partial loss of land (front portion) RM25,326 @ RM1.25 psf.

(ii) Injury to remaining land RM41,775.75

Total Award RM67,101.75

B **[3]** There was a previous acquisition before on 22 May 2008 which involved the front portion of the subject land and two units of houses. The scheduled land was again acquired on 23 December 2010 for the construction of a switching station. The remaining area of the scheduled land is as follows:

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No	Date of Acquisition	Original Land Area/ Area After Acquisition	Area Acquired	Remaining Land Area
D 1.	22 May 2008	1.2191 ha	0.1074 ha	1.117 ha
2.	23 October 2010	1.117 ha	0.1876 ha	0.9241 ha

E **Problem**

[4] The applicant was not satisfied with the award and so filed her objection under s. 38(1) of the Land Acquisition Act 1960 ('LAA'). The grounds of objection are as follows:

F (a) the compensation for partial loss of land does not reflect the market value of the scheduled land as at the date of compulsory acquisition and that the applicant be allowed to claim in accordance with s. 2(a) First Schedule of the LAA;

G (b) the injuries sustained by the remaining portion of the scheduled land is insufficiently compensated and the amount does not reflect the gravity of the damage to the land and that the applicant be allowed to claim in accordance with s. 2(d) First Schedule of the LAA;

H (c) there was no compensation in respect of earth filling done by the applicant over 3/4 acre site for purpose of constructing her new house and that the applicant be allowed to claim under s. 2(a) First Schedule of the LAA; and

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(d) there was no compensation given in respect of damage to the oil palm trees due to flood arising from excavation works done for the main contractor for the double track project and that the applicant be allowed to claim under s. 2(d) First Schedule of the LAA.

Prayer

[5] The applicant prayed that the Award should be increased as follows:

With respect to the

(i) Loss of the acquired land RM56,540 @ RM2.80 psf.

(ii)	Injury to land	RM194,955
(iii)	Earthworks	RM22,022
(iv)	Damage to crops	RM18,000
	Total Claim	**RM291,517**

Principles

The Principle Of Market Value And Common Comparables And The Market Value Of The Land Acquired

[6] It goes without saying that there shall be no acquisition without adequate compensation. It is enshrined in art. 13(2) of the Federal Constitution. Compensation is the amount required to put the dispossessed land owner in the same position as if his property had not been acquired. See *Rickets v. Metropolitan Railway Company* [1867] LR 2 HL 175.

[7] It is of course easier to state than it is to ascertain. When determining the amount of compensation payable one would have to make reference to the market value of the scheduled land. It is said in *Ng Tiou Hong v. Collector of Land Revenue, Gombak* [1984] 1 CLJ 350; [1984] 1 CLJ (Rep) 326 at p. 291; [1984] 2 MLJ 35 at p. 37 that the market value is:

> ... the sum of money that a willing vendor might reasonably expect from a willing purchaser. The element of unwillingness, sentimental value and urgency of the acquisition must be disregarded.

[8] The applicant through her valuer submitted that the determination of market value is based on the evidence of transaction within the neighbourhood as was held in *Nanyang Manufacturing Co v. The Collector of Land Revenue, Johore* [1953] 1 LNS 59; [1954] 1 MLJ 69 at p. 71, His Lordship Buhagiar J said:

> ... I consider that the safest guide to determine the Fair Market Value is the evidence of sales of the same or similar land in the neighbourhood, after making due allowance for all the circumstances.

[9] The government's valuer had cautioned against the applicant's valuer's comparison with lands that are not in the same area and in her report she had referred to the following authorities in *Chuah Say Hai & Ors v. Collector of Land Revenue, Kuala Lumpur* [1967] 1 LNS 34; [1967] 2 MLJ 99 and *Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang* [1967] 1 LNS 12; [1968] 1 MLJ 176 as setting out the proposition that any land which is not in the same locality as acquired land cannot be taken as a comparable. This proposition is also found in s. 1(1A) First Schedule LAA.

[10] The applicant's valuer had compared the following comparables with the scheduled land and the government valuer had in turn commented on the use of such comparables. They are set out briefly below:

(a) Compared with Lot 566, GM 345, Mukim Beriah, District of Kerian, Perak.

This comparable is a vacant agricultural land with direct frontage to Bt 9, Jalan Gunung Semanggol/Changkat Lobak. It was transacted on 2 November 2009 for RM135,000 or RM1.84 psf. The applicant's valuer after making the necessary adjustment to arrive at the value of the scheduled land had arrived at RM1.75 psf.

The government valuer admitted that this piece of land lies in the first layer facing the main road of Bukit Merah/Selama. She said that the location is better as it faces a main road whereas the scheduled land faces a railway line and village road which is secondary road. She concluded that it was not a suitable comparison.

(b) Compared with Lot 561, GM 1288, Mukim of Beriah, District of Kerian, Perak

This comparable is a vacant agricultural land located along Jalan Gunung Semanggol/Changkat Lobak and lies on the opposite side of comparable, Lot 566. It is 3.2km away from Pekan Bukit Merah and about 1.9km north-east of the scheduled land.

Lot 561 was transacted on 8 February 2010 for RM160,000 or RM1.54 psf. After making the necessary adjustment, the applicant's valuer had arrived at RM1.46 psf for the scheduled land. The close proximity to the scheduled land made this comparable highly relevant.

The government valuer regarded this comparable as unsuitable due to its frontage location to Jalan Bukit Merah/Changkat Lobak whereas the scheduled land is located along Jalan Keretapi which is a secondary road.

(c) Compared with Lot 5871, GM 1325, Mukim Beriah, District of Kerian, Perak.

This comparable is a third layer lot of freehold agricultural land located off Jalan Gunung Semanggol/ Changkat Lobak and about 1.6km south-east of the scheduled land. This property was transacted on 4 May 2010 for RM150,000 or RM1.14 psf. The applicant valuer after making the necessary adjustments, arrived at RM1.82 psf for the scheduled land.

The government valuer said that she had used this comparable in coming to her valuation of the scheduled land though without spelling out the percentage of adjustments.

(d) Compared with Lot 2643, Mukim Gunung Semanggol, GM 325, Mukim of Gunung Semanggol, Semanggol, District of Kerian, Perak.

This comparable is a first layer paddy land to a bund access. It is located off Jalan Gunung Semanggol/Changkat Lobak, approximately 3.8km and 3.2km south-west of the scheduled land and Pekan Bukit Merah respectively. The property was transacted on 29 June 2005 for RM586,531 or at RM2.70 psf. The applicant's valuer after making the relevant adjustments arrived at RM3.78 psf for the scheduled land.

The government valuer noted that the land was bought for use as an arowana aqua-culture project and that the buyer was prepared to pay a higher price because of the potential of the land. She said that the price is not reflective of the market value. The comparable was also not suitable as it was not located in the same area as the scheduled land.

(e) Compared with Lot 7864, PN 169448, Mukim of Beriah, District of Kerian, Perak.

This comparable is within the neighbourhood of Pekan Bukit Merah and the scheduled land. It lies about 1km from the scheduled land. The applicant's valuer said that the land was acquired on 22 May 2008 and from the Award it worked out to be RM2.10 psf. The adjusted value was RM2.63 psf for the scheduled land. He cited the case of *Pentadbir Tanah Daerah Petaling v. Glenmarie Estate Ltd* [1992] 1 CLJ 360; [1992] 1 CLJ (Rep) 272; [1992] 1 MLJ 331 where it was observed at p. 276 (CLJ); p. 334 (MLJ) as follows:

> In our view it is not wrong for the learned judge to accept the evidence of previous acquisition award of the same estate as relevant consideration indicative of the market value of the property.

As further support for the above proposition, he referred to *Bertam Consolidated Rubber Co Ltd v. The Collector of Land Revenue, Province Wellesley North Butterworth* [1984] 1 CLJ 69; [1984] 1 CLJ (Rep) 78; [1984] MLJ 164 where at p. 80 (CLJ); p. 165 (MLJ) it was observed as follows:

> In considering the three previous acquisition awards in respect of Bertam Estate, the learned judge reminded himself of what was stated at page 205 of Aggrawala, 3rd Edition, which says that evidence of previous acquisition awards which were accepted are relevant to show the market value, and the prices which are given by the Collector to people whose lands are acquired and who accepted them are valuable evidence in ascertaining the market value of the property.

The government valuer was of the view that this was not a good comparable especially when there is evidence of sale of common comparables like in Lot 5871 Mukim Beriah above.

She referred to the learned author KV Padmanabha Rau in his book *Land Acquisition in Malaysia (Cases and Commentaries)* where at p. 178 the learned author opined as follows:

> Award given in previous acquisition cannot under certain circumstances be taken into account. Where circumstances are very different and there is no parallel whatsoever, the award given in previous acquisition cannot afford any basis for determining the value of the land under acquisition.

(f) Compared with Lot 5807, Mekim Beriah, GM 2149, Mukim of Beriah, District of Kerian, Perak.

This comparable is a kampung land situated within Pekan of Alor Pongsu about 440 meters to Jalan Keretapi and about 6.2km west of the scheduled land. It was transacted on 9 July 2005 for RM289,000 which is RM4.96 psf.

The applicant's valuer working on the relevant adjustments had arrived at RM2.73 psf for the scheduled land.

The government valuer is of the view that the comparable is not suitable as the land is in a developed area in Pekan Alor Pongsu with various amenities.

(g) Compared with Lot 5543, GM 1171, Mukim of Gunung Semanggol, District of Kerian, Perak.

This comparable is a second layer lot to Jalan Gunung Semanggol/Changkat Lobak but with a frontage to a motorable laterite bund access. It is a paddy land with potential for aquaculture farming due to a constant supply of water being channelled to this land *via* an Irrigation Reservoir Reserve of Bukit Merah. It is located about 0.8km south-east of the scheduled land. It was transacted on 4 June 2010 for RM2,200,000 which is at RM9.70 psf.

The applicant valuer after factoring in the necessary adjustments had arrived at RM3.40 psf being the value of the scheduled land.

The government valuer was of the view that the price was high because the buyer was prepared to pay for the potential of the land for arowana aquaculture. The purchaser is Sinar Arowana Sdn Bhd.

A The applicant's valuer concluded as follows:

> Having considered the above comparables, adjusted values, surrounding development and the current use of scheduled land for cultivation and dwelling purposes, we are of the opinion that the market value of the scheduled land as (sic) the date of compulsory acquisition, 23 December 2011, we are of the opinion that the market value of (sic) scheduled land is RM2.80 psf.

B

[11] The applicant's valuer had criticised the valuation of the C government valuer in that she had made comparisons with three pieces of lands without setting out the itemised allowable adjustments whether they be pluses or minuses in percentage to arrive at her market value of RM1.25 psf as that of the scheduled land. Her comparables had been the following:

D (a) Lot 5296, Mukim of Beriah, District of Kerian, Perak.

This land was transacted on 2 November 2009 at RM0.98 psf. It is located about 2.3km from the scheduled land. The applicant's valuer had criticised the government valuer as when E using this comparable to value the scheduled land, she had not shown any basis for adjustment for determining a value of RM1.25 psf.

(b) Lots 5963 and 5871, Mukim of Beriah, District of Kerian, F Perak.

These were transacted on 4 May 2010 at RM1.10 psf and they were located about 1.6km south of the scheduled land. The government valuer had arrived at the market value of G RM1.25 psf without stating the adjustments to be made for the differences in location, size, shape, time, tenure, improvements and infrastructures. To help us visualise what the applicant's valuer is saying, the adjustments format followed by the applicant's valuer are reproduced below with H the percentage of adjustments not spelt out by the government valuers as follows:

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Analysed Price/Base Value			RM1.10 psf
Adjustments			
1. Location.	]	%	
2. Size.	]		
3. Shape.	]		
4. Time.	]		
5. Improvement.	]		
6. Infrastructures.	]		???
7. Tenure.	]	_____	_____
Effective Adjustment		% (???)	
Adjusted Value			RM1.25 psf

[12] Whilst appreciating that everything important is to some extent measurable, it does not then mean that the valuation of the government valuer in arriving at RM1.25 psf or that of the two assessors in arriving at RM1.50 psf are completely unjustifiable and thus faulty and fatally wrong. The applicant's valuer cited *Bukit Rajah Rubber Company Ltd v. Collector of Land Revenue, Klang* [1967] 1 LNS 12; [1968] 1 MLJ 176 as authority for setting out the proposition that the percentage differences in the adjustments must be set out in detail. However in that case at p. 180 (MLJ), His Lordship Raja Azlan Shah J (as His Royal Highness was then) actually set out most sagaciously and succinctly the difficulties of assessing the proper market value of the land acquired as follows:

> In my opinion, *no hard and fast rule can be laid down regarding the method to be adopted for assessing the proper market value of the land acquired.* In the last analysis each case must be considered in the light of its special features. I have considered "evidence of sales of the same land" as the safest guide in arriving at a fair market value. Of this, there is none. *I have also considered "evidence of sales of similar land in the neighbourhood" and I have arrived at the conclusion that after making due allowance for all peculiar circumstances these sales can only afford assistance in arriving at the proper market value.* It is plain that evidence of previous sales of neighbouring lands can seldom be obtained which shall be precisely parallel in all those circumstances to the sale of the land acquired.

A Differences, though of varying degrees, must always exist. *What precise allowances should be laid down for these differences is not a matter which can be reduced to any rigidity*. With regard to expert opinions that were adduced, I would like to lay emphasis on the judgment of earlier decided cases that generally they have very little probative value unless supported by, or coincide with, other evidence. In my view, the market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily, the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value. (emphasis added).

[13] I would hold that so long as the various adjustments have been referred to in arriving at the market value of the scheduled land from a common comparable, that would suffice. After all valuation is both a science as well as an art. There is room for definitiveness and discretion in as much as there is room for a right value as for a range of values. It can be appreciated that the more the variables or differences the greater the tendency for discretion to set in, diffusing the definitiveness in the process. Professor Gerald R Brown, a Professor of Property Development and Asset Management in the University of Salford once wrote perceptively as follows in the *Journal of Property Valuation and Investment* vol 16, issue 1 (1998):

> As an art form, valuation had adopted the status of a mystical skill. Closely guarded secrets were passed down from one generation of valuers to another, with the reason for adopting certain practices being explained by years of accumulated wisdom. This approach was probably explainable in a world that had little real information, was inactive and relied on the belief that property had some special value that set it apart from other forms of investment. The need to justify a valuation or an investment decision was not something that could be realistically applied to property.
>
> Over the last decade, however, property valuation has begun to embrace the ideas that have dominated finance for the last four decades. We now live in a brave new world that is ruled by the need for information and statistics. Valuers have to justify their decisions in quantitative terms and can no longer rely on the art versus science argument. Property is part of the capital markets.

[14] That is where the rationale for s. 40D of the LAA comes ready. It is like two more experts in the two assessors, one from the government and one from the private sector come in to comment on the two valuation reports of the applicant's valuer and the government valuer. Where both assessors can concur with each other on the market value then s. 40D(1) would hold sway and if not s. 40D(2) would apply.

[15] Section 40D of the LAA provides as follows:

> **Decision of the Court on compensation**
>
> 40D
>
> (1) In a case before the Court as to the amount of compensation or as to the amount of any of its items the amount of compensation to be awarded shall be the amount decided upon by the two assessors.
>
> (2) Where the assessors have each arrived at a decision which differs from each other then the Judge, having regard to the opinion of each assessor, shall elect to concur with the decision of one of the assessors and the amount of compensation to be awarded shall be the amount decided upon by that assessor.
>
> (3) Any decision made under this section is final and there shall be no further appeal to a higher Court on the matter.

[16] The two assessors, Encik Mohamad Azlan bin Abdul Kadir representing the government and Encik Mohd Shalan bin Walat representing the private assessor have both in their written signed report have agreed on RM1.50 psf being a reasonable market value of the scheduled land acquired. Where the two assessors have concurred with each other, it is not for the court to decide otherwise. Their arriving at the said sum of RM1.50 psf was not unreasonable taking into account the comments of both the applicant's valuer and the government valuer.

[17] As can be seen the only comparable which the government valuer found to be most relevant was Lot 5871, GM 1325, Mukim Beriah, District of Kerian, Perak which was transacted at RM1.14 psf and which the applicant's valuer adjusted to RM1.82 being the value of the scheduled land. Distance-wise it is 1.6km south of the scheduled land. The government valuer had valued

the scheduled land at RM1.25 psf. The other comparables are either further away from the scheduled land or time lapsed of transaction have been more than a year or that the transacted price was not the fair market value having been bought for arowana aquaculture or which the buyer was prepared to pay a premium.

[18] The two assessors having come to a common concurrence of RM1.50 psf, there is no reason for me to disagree. Indeed s. 40D(1) expressly states that the amount of compensation to be awarded shall be the amount decided upon by the two assessors. Once the two assessors have come to a common concurrence as to the market value, there is no need for me to consider the matter further but merely to comply with their computed market value. I am not at liberty to disagree and for good reason as the two assessors are the experts for the market value of the lands are concerned. Neither do I have any discretion to differ from them as s. 40D(1) clearly states that the amount of compensation to be awarded shall be the amount decided upon by the two assessors.

[19] The increase from RM1.25 psf to RM1.50 psf will yield RM30,289.60 (RM1.50 X 20,193 sq ft) compared to the previous RM25,326 which is an increase of RM4,674.

Expressed in hectares it will be: 0.1876 hectare @ RM161,458.41 = RM30,289.60.

The Injurious Affection Caused And The Amount To Be Assessed For Injurious Affection

[20] The assessors are in agreement that the following as set out in the applicant's valuer valuation report of 3 September 2012 should be taken into consideration in assessing injurious affection:

(a) A letter dated 13 July 2012 (ref: TNBT/IP 7/1/1) issued by Ir Hj Jeslee bin Mohamad, a TNB manager for Perak, fencing will be done all along the front portion of the remaining land for public safety. This will inevitably restrict easy entry to the subject land.

Refer appendix 'F' of the valuation report of applicant's valuer (3 September 2012).

(b) According to TNB engineer, Encik Ikhwan, a switching station comprising a heavy pylon of about 20 meters high with high powered transmission lines connected to it would be built at the front portion of the subject land and neighbouring land, Lot 488 as indicated by 'A5' as indicated by 'A4' on the plan (marked as appendix 'B1') for receiving 132kV of electricity supply.

Refer appendix 'B1' of the valuation report of the applicant's valuer (3 September 2012).

(c) The findings revealed that the ROW in which the switching station would be built lies within 30 meters from the remaining land. Due to the close proximity of the switching station and the remaining land, any proposal to build a house in the front portion of Lot 489 is likely to put the landowner and her property in a perilous condition. Accidents that involve the switching station would easily spread to the front portion of the subject land.

This has a diminutive effect on the value of the land which has to be accounted in the award.

(d) Exposure to high risk.

From the enquiries made at TNB office and plan furnished by TNB engineers, the heavy equipments that would be erected on the scheduled land comprises the followings:

(i) 132 kV tower

(ii) 132 kV low level gantry

(iii) 132 kV underground cable; and

(iv) 132 kV overhead lines

It is envisaged that when fully erected, the heavy equipments that overhang the owner's land would pose a serious threat to the lives of the people occupying the subject land.

Refer appendix 'C' of the valuation report of the applicant's valuer (3 September 2012).

(e) Effects of Electro-Magnetic Field (EMF).

Studies carried out by experts on EMF produced by bare high tension wires revealed that radiation in EMF can reach those residents or schools situated within 20 - 30 meters from transmission lines or electricity supply plant.

Finding on the effects of EMF produced by high tension wires with 132 kV are attached herein marked as appendix '1'.

(f) Distorted shape of scheduled land.

In addition, the second acquisition of the front portion has inevitably altered the front boundaries into sharp triangular shaped boundary marks which distort the shape of the subject land. It has becomes unattractive and in consequence will affect its marketability and consequently, diminishes the value of the land.

(g) Obstructed view.

Tall heavy pylons erected on the subject land of more than 20 meters high is likely to block the view of the subject land. One of the characteristics of a saleable property is its enjoyment of direct or uninterrupted view seen from the front. In this instance, the subject land is likely to lose its frontage view. In fact the position of the switching station is an eyesore to the land owner.

(h) Absence of easement.

It was observed that the proposed switching station when completed will literally block the front portion of the subject land and as a consequence, TNB proposes to provide a new access approximately 3 meters (9.8 feet) in width which will be built through the left side of the land which links the subject land to the new access road currently under construction. This is in fact an unofficial opening to the subject land and at the date of acquisition there was no official easement being created as provided under s. 283, National Land Code 1965.

(i) Inferior location.

The acquisition of the subject land for constructing a switching station has altered the position of the subject land from a first layer lot to Jalan Keretapi to an inferior location with a tiny frontage to a proposed access.

(j) Uneconomical size.

The subject land is now reduced from 1.2191 hectares to a mere 0.9241 hectare which is no longer an economical size for cultivating oil palm hence, will not accommodate suitably a kampong house on it.

[21] The applicant's valuer drew the court's attention to the Court of Appeal case *Tenaga Nasional Bhd v. Ong See Teong & Anor* [2010] 2 CLJ 1; [2010] 2 MLJ 155 where it was decided that the affected party is subjected to danger from the erected TNB heavy equipment. His Lordship Suriyadi JCA (now FCJ) at p. 20 (CLJ); p. 174 (MLJ) opined as follows:

> These pictures highlight the difference in sizes between an LLN 33kV post (an original post) and the gigantic new TNB 275kV transmission tower. It would be impossible to put on paper the indescribable and perpetual fear the appellants would have to undergo, either imagined or real, if they have to live under the giant pylons that overhang their houses day in and day out after the construction is completed. Needless to say prior to the completion of these structures the appellants would already have a taste of the future bitter sufferings when they have to put up with the huge machineries and other infractions by the workers of the respondent.
>
> Evidence adduced also confirmed the negative medical effect on people, especially children who are more susceptible to leukemia and like diseases, when bombarded by the flow of electricity passing over their houses. Yet despite these hazardous life threatening factors the respondent ventilated that money would be adequate to compensate them for their discomfort. The compensation received by the appellants is supposed to mollify the appellants for living under the pylons with all the hidden dangers which have not been explained to them. The respondent would eventually reap the benefits of their displacement without much effort and expense when the appellants eventually abandon their homes for fear of their health and lives. This subtle and unconscionable way of driving and depriving the appellants of

their property, hence in effect an acquisition of their land by the respondent (a power exercisable only by the State authority), surely would contravene their constitutional rights (Article 13 of the Federal Constitution).

With such a mega project in the offing, and the eventual repercussion pervading the lives of the appellants being so major, this panel was unable to agree with the stance of the respondent or the finding of the learned judge.

A major upheaval in the health and lives of the appellants would undoubtedly be witnessed thereafter.

[22] Both the assessors agree with the Before and After Method in assessing the amount of injurious affection caused. They also agreed that based on the detrimental effects of the compulsory acquisition, the total diminution of land value as determined below amounts to 70%. By applying the "Before and After Method of Valuation" it is now possible to determine the diminution in value of the remaining land that represents the compensation required to reinstate the subject land.

[23] The applicant's valuer has set out in table 6 a summary as to how he had arrived at 70% in diminutive rate which is reproduced below:

The Evaluation Of The Diminutive Effects Of The Construction Of The Switching Station On Lot 489, Mukim Bukit Merah, District Of Kerian, Perak

(Projek Landasan Kereta Api Berkembar Elektrik Ipoh – Padang Besar)

No	Types Of Injury To Land	Diminutive Rate
1.	Loss of proper access and frontage to the new proposed road (replacing Jalan Keretapi);	30%
2.	The location of subject land is now reduced to a secondary location being blocked by the switching station and TNB fences built in the front of the remaining land;	10%
3.	The front boundaries become distorted bearing sharp triangular shapes;	5%

No	Types Of Injury To Land	Diminutive Rate
4.	The reduced size of the subject land renders it uneconomical to cultivate oil palm and dwelling purposes;	5%
5.	The remaining land lies within close proximity to the proposed switching station which carries high current voltage of 132kV creating a perilous situation where the owner will be exposed to	20%
	Total Diminution in Value	70%

[24] Compensation for injurious affection of Lot 489, GM 3386, Mukim of Beriah District of Kerian, Perak.

Remaining land is calculated as follows:

Size of land	1.2191 hectare
Acquisition (22 May 2008)	0.1074 hectare
Remaining	1.1117 hectare
Acquisition (23 December 2010)	0.1876 hectare
Size of remaining land:	0.9241 hectare

70% of RM161,458.41 = RM113,020.89

0.9241 hectare @ RM113,028.89 = RM104,500

Thus the increased in compensation is RM104,500 minus RM41,775.75 = RM62,724.25.

Claim For Loss Arising Out Of Earthwork

[25] We accept the report of the applicant's valuer that when the site was inspected on 21 January 2011, the land owner had engaged a contractor to prepare the site for rebuilding a house on the front portion of the land. It was submitted that s. 115 of the National Land Code 1965 allows an owner of an agricultural land to use 1/5 of the land for dwelling purposes.

[26] The proviso to s. 115(4)(a) reads:

> Provided that the dwelling house for the proprietor of the land or any other person lawfully in occupation thereof shall not occupy more than one-fifth of the whole area of the land or two hectares, whichever is the lesser.

[27] It was pointed out that the filled up area approximately 3/4 acre in size is now being acquired and the cost of earth filling was not compensated. There is evidence of the loss of earth filling at RM22,022 and basis of valuation is being provided at p. 32 of the valuation report of the applicant's valuer dated 23 December 2010. However we have disallowed the sum of RM200 being "duit makan" and so we allowed the sum of RM21,780.

Refer appendix 'C' of valuation report of applicant's valuer's report (3 September 2012).

Claim For Damage To Crops

[28] The applicant's valuer noted that his inspection on 8 November 2012 revealed that the earth drains built on both sides of Jalan Keretapi have been filled up to make way for the said new road. At the same time, the sub-contractor engaged by the main contractor to prepare the site for erection of the pylon has filled up the acquired land much higher than the scheduled land, hence, rain water flowed to the scheduled land where a portion of the land is inundated during rainy days with some oil palm trees are flooded with water. According to the applicant and some oil palm growers, it would not be possible to apply fertilizers or do any soil improvement when the land is flooded and according to the growers their roots and stems become weak and affect their biological growth and productivity. Approximately 60 oil palm trees of about 23 years are affected by the flood.

[29] We agree that although the inspection on the flood affecting the scheduled land was carried out on 8 November 2012 that is after the date of acquisition, 23 December 2010, the law provides that under s. 2(d), First Schedule, LAA that such damage to land is claimable:

Section 2(d)

the damage, if any, sustained or likely to be sustained by the person interested at the time of the Land Administrator's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, if any other manner.

[30] The applicant's valuer observed during his inspection that about 60 oil palms of about 23 years which were yielding fresh fruits are affected by the flood due to excavation works. Due to the damage, problem of maintaining the palms and harvesting he had estimated the cost of reinstating the crops as follows:

60 oil palm trees RM300 per tree = RM18,000

[31] He submitted that the above average value of the oil palms is based on the age of the tree, their fruit bearing capacity and state of maintenance.

[32] As the trees were already 23 years old which is the average fruit-producing life span and as there was no evidence tendered on the costs of RM300 per tree, we had allowed RM150 per tree which works out to RM9,000.

Claim For The Grant Of Easement From The Court

[33] The applicant's valuer after the decision of the court on 26 April 2013 and before the extraction of the order, had written to the court asking for easement to be granted by the court.

[34] The grant of easement is upon an application by the applicant to the Land Office and upon her fulfilment of the relevant conditions and payment of fees as provided under the National Land Code 1965. This court would not want to curb the discretion of the Land Administrator in any way.

Pronouncement

[35] The increased in the compensation awarded are set out below:

Administrator Court	Award of Land awarded	Compensation Compensation	Increase in b y
Land Acquired	RM25,326.00	RM30,289.50	RM4,963.50
Injurious Affection	RM41,775.75	RM104,500.00	RM62,724.25
Claim for Earthworks		RM21,780.00	RM21,780.00
Claim for Damage to Crops		RM9,000.00	RM9,000.00
			RM98,467.75

[36] Both the assessors have indicated their concurrence and signed at the bottom of the Award.

[37] Section 48 of the LAA provides for interest to be awarded reads as follows:

> **48. Land Administrator may be required to pay late payment charges.**
>
> If the sum which in the opinion of the Court the Land Administrator ought to have awarded as compensation is in excess of the sum which the Land Administrator did award as compensation, the award of the Court may direct that the Land Administrator shall pay late payment charges on such excess at the rate of eight per cent per annum from the date on which the Land Administrator took possession of the land to the date of payment of such excess to the Court or to the person interested.

[38] The date the Land Administrator took possession of the land is the date of Borang K issued by the Land Administrator which is the notification that the land has been taken possession of. That was dated 22 April 2011.

[39] Interest shall thus be at 8% per annum on the increased in compensation sum of RM98,467.75 from 22 April 2011 which is the date of Borang K up to the date of payment to the applicant and the deposit of RM3,000 paid shall be refunded by the respondent to the applicant.